

Section 746, Title 14, CCR is amended as follows:

§ 746. Procedures for License or Permit Revocations, Suspensions, Reinstatements, Transfers or Waivers of Renewal Requirements Including Hunting and Sport Fishing License or Permit Privileges.

Except where revocation, suspension, transfer, reinstatement or waiver of renewal requirement procedures are specifically provided for by the Fish and Game Code or regulations made pursuant thereto, the commission, pursuant to the provisions of Section 309 of the Fish and Game Code, shall comply with the following minimum safeguards to afford each applicant, licensee or permittee procedural and substantive due process when the commission considers revocation, suspension, transfer, reinstatement or waiver of renewal requirements for a license or permit including hunting and sport fishing license or permit privileges.

(a) In the case where the applicant, licensee or permittee has already been convicted of a violation of the Fish and Game Code or any regulation pertaining to the activity licensed or permitted by said code, the commission shall comply with the following:

(1) The commission's president may appoint a commissioner, the commission's legal counsel, a former Executive Director of the commission, or a member of the State Bar of California with at least ten years' experience in the active practice of law and determined qualified by the president, to serve as a hearing officer.

(2) The hearing shall be held at such time and location determined by the hearing officer with due consideration for the convenience of the parties and the ends of justice. The hearing officer may engage in exparte communications with the parties for the purpose of setting a time and place of hearing.

(3) The commission shall notify the applicant, licensee or permittee, by certified letter, of the commission's intent to consider the revocation or suspension of his or her license or permit privileges. The certified letter shall include the following information:

(A) Name of applicant, licensee or permittee and last known address the Department of Fish and Game has on file.

(B) Date, time and place of scheduled hearing.

(C) Reason for potential commission action, including a statement as to the date and fact of conviction.

(D) A copy of Section 746, Title 14, California Code of Regulations.

(E) A statement that the applicant, licensee or permittee has the right to appear and to be represented by counsel.

(F) A statement that any continuance of the scheduled hearing date may be obtained only through compliance with subsection (d) of Section 746, Title 14, California Code of Regulations.

(4) The proceedings of the hearing shall be recorded by a court reporter or an electronic tape recording system.

(5) The hearing shall be conducted by the hearing officer who shall control the nature and order of the proceedings.

(6) At the hearing, the hearing officer shall read the conviction documents. The department shall provide the hearing officer with the background information regarding the violation and conviction and shall submit into the record a copy of a document which

includes the facts of the conviction of a violation of regulation or statute.

(7) The applicant, licensee or permittee shall make his or her statement regarding the violation and conviction, and may argue that extenuating circumstances were such as to not warrant the loss of his or her license or permit privileges.

(8) The hearing officer may examine any party or witness.

(9) Within 30 days of the conclusion of the hearing, the hearing officer shall prepare and submit to the executive director a proposed decision which shall include proposed findings or reasons for the commission's action.

(10) Upon receipt of the proposed decision, the commission shall provide counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the hearing officer's proposed decision.

(11) At a meeting of the commission, no later than 60 days following receipt of the hearing officer's proposed decision, the commission shall consider adoption of the proposed decision. The commission may by order adopt, revise or reject the proposed decision. The commission shall serve counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the commission's order and decision. The order is final.

(12) The applicant, licensee or permittee may request judicial review by filing a petition for writ of mandate in accordance with provisions of the Code of Civil Procedure within 30 days from the date of service (postmark) of the order. The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code.

(b) In the case where the applicant, licensee or permittee has not been convicted of a violation of the Fish and Game Code or any regulation pertaining to the activity licensed or permitted by said code, but has been cited by the department, the commission shall comply with the following:

(1) The commission's president may appoint a commissioner, the commission's legal counsel, a former Executive Director of the commission, or a member of the State Bar of California with at least ten years experience in the active practice of law and determined qualified by the president, to serve as a hearing officer.

(2) The hearing shall be held at such time and location determined by the hearing officer with due consideration for the convenience of the parties and the ends of justice except that any hearing requested by the holder of a commercial lobster permit, pursuant to Section 8254.7 of the Fish and Game Code, shall be held within the time specified therein. The hearing officer may engage in ex parte communications with the parties for the purpose of setting a time and place of hearing.

(3) The commission shall notify the applicant, licensee or permittee, by certified letter, of the commission's intent to consider the revocation or suspension of his or her license or permit privileges. The certified letter shall include the following information:

(A) Name of applicant, licensee or permittee and last known address the Department of Fish and Game has on file.

(B) Date, time and place of scheduled hearing.

(C) Reason for potential commission action, including a concise statement of the alleged acts or omissions of the applicant, licensee or permittee which constitute a violation of the Fish and Game Code and regulations made pursuant thereto with

specific citations of the code sections alleged to have been violated.

(D) A copy of Section 746, Title 14, California Code of Regulations.

(E) A statement that the applicant, licensee or permittee has the right to appear and to be represented by legal counsel.

(F) A statement that any continuance of the scheduled hearing date may be obtained only through compliance with subsection (d) of Section 746, Title 14, California Code of Regulations.

(4) The proceedings of the hearing shall be recorded by a court reporter or an electronic tape recording system.

(5) The hearing shall be conducted by the hearing officer who shall control the nature and order of the proceedings.

(6) The applicant, licensee, permittee and the department have the right to present evidence at the scheduled hearing as follows:

(A) Oral evidence shall be taken on oath or affirmation.

(B) The parties may submit affidavits by adhering to the procedure set out for the submission of affidavits in lieu of testimony in judicial arbitration proceedings, California Rules of Court, Rule 1613, subdivision (b)(2), and may submit transcripts of depositions by adhering to the procedure set out for the submission of depositions in judicial arbitration proceedings, California Rules of Court, Rule 1613, subdivision (b)(3).

(C) Each party may call and examine witnesses, cross-examine opposing witnesses on any relevant matter, may rebut evidence against him or her, and may orally argue the matter.

(D) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons would rely in the conduct of serious affairs.

(7) The hearing officer may examine any party or witness.

(8) Within 30 days of the conclusion of the hearing, the hearing officer shall prepare and submit to the executive director a proposed decision based on the evidence presented at the hearing. The decision shall contain proposed findings and reasons for the commission's action.

(9) Upon receipt of the proposed decision, the commission shall provide counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the hearing officer's proposed decision.

(10) At a meeting of the commission, no later than 60 days following the receipt of the hearing officer's proposed decision, the commission shall consider adoption of the proposed decision. The commission may by order adopt, revise or reject the proposed decision. The commission shall serve counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the commission's order and decision. The order is final.

(11) The applicant, licensee or permittee may request judicial review by filing a petition for writ of mandate in accordance with provisions of the Code of Civil Procedure within 30 days from the date of service (postmark) of the order. The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code.

(c) In the case where the applicant, licensee or permittee has neither been

convicted nor cited by the department for a violation of the Fish and Game Code, but is appealing department denial of issuance, transfer, reinstatement or requesting waiver of renewal requirements for any permit or license, including a hunting or sport fishing license or permit, the commission shall comply with the following:

(1) The commission's president may appoint a commissioner, the commission's legal counsel, a former Executive Director of the commission, or a member of the State Bar of California with at least ten years experience in the active practice of law and determined qualified by the president, to serve as a hearing officer.

(2) The hearing shall be held at such time and location determined by the hearing officer with due consideration for the convenience of the parties and the ends of justice. The hearing officer may engage in ex parte communications with the parties for the purpose of setting a time and place of hearing.

(3) The commission shall notify the applicant, licensee or permittee, by certified letter, of the commission's intent to consider the request for issuance, reinstatement or waiver of renewal requirements for the license or permit. The certified letter shall include the following information:

(A) Name of applicant, licensee or permittee and last known address the Department of Fish and Game has on file.

(B) Date, time and place of scheduled hearing.

(C) A copy of Section 746, Title 14, California Code of Regulations.

(D) A statement that the applicant, licensee or permittee has the right to appear and to be represented by legal counsel.

(E) A statement that any continuance of the scheduled hearing date may be obtained only through compliance with subsection (d) of Section 746, Title 14, California Code of Regulations.

(4) The proceedings of the hearing shall be recorded by a court reporter or an electronic tape recording system.

(5) The hearing shall be conducted by the hearing officer who shall control the nature and order of the proceedings.

(6) The applicant, licensee or permittee and the department have the right to present evidence at the hearing as follows:

(A) Oral evidence shall be taken on oath or affirmation.

(B) The parties may submit affidavits by adhering to the procedure set out for the submission of affidavits in lieu of testimony in judicial arbitration proceedings, California Rules of Court, Rule 1613, subdivision (b)(2), and may submit transcripts of depositions by adhering to the procedure set out for the submission of depositions in judicial arbitration proceedings, California Rules of Court, Rule 1613, subdivision (b)(3).

(C) Each party may call and examine witnesses, cross-examine opposing witnesses on any relevant matter, may rebut evidence against him or her, and may orally argue the matter.

(D) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons would rely in the conduct of serious affairs.

(7) The hearing officer may examine any party or witness.

(8) Within 30 days of the conclusion of the hearing, the hearing officer shall prepare and submit to the executive director a proposed decision based on the evidence presented at the hearing. The decision shall contain proposed findings and

reasons for the commission's action.

(9) Upon receipt of the proposed decision, the commission shall provide counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the hearing officer's proposed decision.

(10) At a meeting of the commission, no later than 60 days following the receipt of the hearing officer's proposed decision, the commission shall consider adoption of the proposed decision. The commission may by order adopt, revise or reject the proposed decision. The commission shall serve counsel or, if appearing pro se, the applicant, licensee or permittee, by certified mail, a copy of the commission's order and decision. The order is final.

(11) The applicant, licensee or permittee may request judicial review by filing a petition for writ of mandate in accordance with provisions of the Code of Civil Procedure within 30 days from the date of service (postmark) of the order. The record of the proceedings as designated by the petitioner shall be prepared by the commission and delivered to petitioner's counsel or, if appearing pro se, the petitioner within 30 days after petitioner's request and upon payment of the fee specified in Section 69950 of the Government Code.

(d) Requests or applications to continue a hearing shall be made in writing to the hearing officer or the Executive Director of the commission. The hearing officer or the Executive Director must receive the request no less than two business days prior to the scheduled date of the hearing. A copy of the request shall also be sent to the department. The application shall include the case name and the date, time, and place of the scheduled hearing. The application shall identify any previous requests to continue the matter. The application shall also contain a statement of all facts the applicant contends constitute good cause to continue the matter. The hearing officer or the Executive Director has the discretion to waive the requirement for written application upon a showing of additional good cause. In cases where the licensee or permittee is appealing department denial of issuance, transfer, reinstatement or requesting waiver of renewal requirements for any permit or license pursuant to subsection (c), above, failure to appear as scheduled or to comply with this provision shall be deemed a withdrawal of the appeal.

NOTE:

Authority cited: Sections 309 and 12155.5, Fish and Game Code. Reference: Sections 309, 7852.2, 8254.7, 8280.4, 8422, 8423.5, 8562, 8569, 12154, 12155, 12155.5 and 12156, Fish and Game Code.